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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,391	02/06/2004	John D. Norton	P11581.00	6350
27581	7590	06/19/2006	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARK MINNEAPOLIS, MN 55432-9924			LAYNO, CARL HERNANDZ	
			ART UNIT	PAPER NUMBER
			3766	
DATE MAILED: 06/19/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/773,391

Applicant(s)

NORTON ET AL.

Examiner

Carl H. Layno

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-15 and 24-37 is/are allowed.
- 6) ☒ Claim(s) 16 is/are rejected.
- 7) ☒ Claim(s) 17-23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. Applicant's formal drawings were received by the Office on July 12, 2004 and have been approved by the Examiner.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Specifically, the applicant should refrain from using the words "the invention" (line 1), and the word "means" (lines 5, 9, and 11).

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 16 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over anticipated by Graham, Jr. (US 4,568,869).

The Graham, Jr. (US 4,568,869) patent describes a battery charging circuit which reduces the amount of undesirable resistive film buildup on its batteries by applying a series of high voltage pulses (Fig.2) to improve its battery re-charging rates. Applicant's attention is directed to col.1, lines 54-68 thru col.2, line 2, and to col.2, lines 20-28. Though not stated, it would have been obvious if not inherent for the user of the Graham, Jr. device to have determined whether or not the batteries have collected enough resistive film in order to properly operate Graham, Jr.'s recited method. The Examiner considers Graham, Jr. patent to be applicable in this instance since it recites a general purpose battery circuit useable in an implantable medical device, and since applicant's claim does not recite any application specific step involving an implantable medical device.

Allowable Subject Matter

5. Claims 17-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 1-15 and 24-37 are allowed.

7. The following is a statement of reasons for the indication of allowable subject matter:

Independent claim 1, 10, 24, and 31 recite apparatus and method steps involving features not found in any of the prior art. Specifically, claim 1 recites a novel combination of a battery with resistive film used in conjunction with a “low-deformation-rate capacitor” and a “means for periodically discharging energy” from the battery into the capacitor. Although the Graham, R. (US 4,568,869) patent cited *supra* describes a circuit for reducing resistive film build up in batteries by repeated electrical battery discharge, it fails to recite the concept of a “low deformation-rate capacitor”. Independent claims 10, 24, and 31, specify features and steps used by an implantable cardioverter/defibrillator involving means for discharging a battery to reduce film build-up in combination with a capacitor, lead, and status systems (claim 10), steps involving a “battery exercising session” (claim 24), and the use of a computer readable medium for performing the steps involving the “battery exercising session” (claim 31). Although the Graham, Jr. ('869) patent is pertinent, the Examiner could find no teaching in it or in any other reference(s) in the prior art for using this resistance film reduction method in an implantable cardioverter/defibrillator.

Unable to find these combinations of details in the prior art, the Examiner deems these claims and their depending claims to be allowable.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Merritt et al (US 2004/0161671 A1) U.S Patent Application Publication describes an implantable medical device 10 (Fig.1) which resolves the problem of resistive film build up on

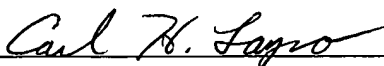
its batteries by changing the composition of the electrolyte fluid within its batteries.

Unfortunately, the reference provides no teaching of using periodic discharges to perform the same task.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CARL LAYNO
PRIMARY EXAMINER

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